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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,546	01/07/2002	Kamran Loghman-Adham	07308.120	4853

7590 02/17/2004

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/036,546	<b>Applicant(s)</b> LOGHMAN-ADHAM, KAMRAN	
	<b>Examiner</b> Alton N. Pryor	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 2-20 and 34-47 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 12-20 is/are allowed.
- 6) ☐ Claim(s) 2-11, 34, 35, 37 and 39-47 is/are rejected.
- 7) ☐ Claim(s) 36 and 38 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. See rejections below.

#### ***Claim Rejections - 35 USC § 112***

Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "incapacitating agent" in claims 2-8,44,45 is used by the claim to mean "inflammatory agent", while the accepted meaning is "a substance which disables." The term is indefinite because the specification does not clearly redefine the term.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5,6,8,10,11,34,35,42,44,46,47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakanishi et al (US 20020058053; 5/16/02). Nakanishi teaches

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a foundation cream comprising glyceryl tri-2-ethylhexanoate, KSP 545, and water. See Example 12. KSP is an organopolysiloxane. Nakanishi teaches that KSP is one of many nonionic surfactants that can be added to the foundation cream composition. Nakanishi teaches a number of other nonionic surfactants including the instant propylene glycol fatty acid ester that can be added to the foundation cream. See paragraph 43.

Nakanishi also teaches the addition of anti-inflammatory agents (incapacitating agent) to the foundation cream.

Claims 2-4,7,39-41,43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakanishi as applied to claims 5,6,8,10,11,34,35,42,44,46,47 above, and further in view of Goodman (US 4883659; 11/28/89). Nakanishi teaches all that is recited in claims 2-4,7,39-41,43 except for the foundation cream comprising propylene glycol dicaprylate / dicaprate. However, Goodman teaches a skin care (foundation cream) composition comprising propylene glycol dicaprylate / dicaprate. See abstracts, column 3 lines 34-37, column 9 lines 17-50. It would have been obvious to one having ordinary skill in the art to modify the composition of Nakanishi to include the propylene glycol dicaprylate / dicaprate taught by Goodman. One would have been motivated to do this for the following reason: Propylene glycol dicaprylate / dicaprate is in the propylene glycol fatty acid ester genus. Note that Nakanishi teaches that his foundation cream can comprise a propylene glycol fatty acid ester.

Claims 9,45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakanishi as applied to claims 5,6,8,10,11,34,35,42,44,46,47 above, and further in view of Patt (US20030134780; 7/17/03). Nakanishi teaches all that is recited in claims 9,45

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except for the foundation cream comprising capsaicin. However, Patt teaches a foundation cream composition comprising capsaicin. See abstracts, paragraphs 12,13,34,37. It would have been obvious to one having ordinary skill in the art to modify the composition of Nakanishi to include the capsaicin taught by Patt. One would have been motivated to do this since Nakanishi teaches the inclusion of an anti-inflammatory agent into his composition and because capsaicin is a species in the anti-inflammatory compound genus.

#### ***Other Matters***

Claim 37 depends on claim 37. Correction is necessary. Claim 38 depends from claim 37. The correction to the dependency of claim 37 will result in the correction of claim 38.

#### ***Claim Objection / Allowable Subject Matter***

Claim 36 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 12-20 are allowable. The prior art does not teach or suggest the instant composition comprising a propellant.

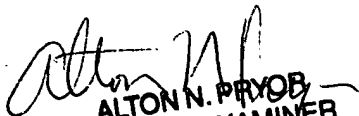
#### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0602. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

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If Examiner can not be reached, Thurman Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
ALTON N. PRYOR  
PRIMARY EXAMINER  
Primary Examiner  
AU 1616